

**CONSUMER PROTECTION and GOVERNMENT OPERATIONS
of the
SUFFOLK COUNTY LEGISLATURE**

Minutes

A regular meeting of the Consumer Protection and Government Operation Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Thursday, **March 27, 2003.**

MEMBERS PRESENT:

Legislator Cameron Alden - Chairman
Legislator William Lindsay - Vice-Chair
Legislator Lynne Nowick
Legislator Angie Carpenter

ALSO PRESENT:

Paul Sabatino - Counsel to the Legislature
Ed Hogan - Aide to Legislator Nowick
Warren Green - Aide to Legislator Alden
Meghan O'Reilly - Aide to Presiding Officer Postal
Charles Gardner - Director of Consumer Affairs
Joe Muncey - Budget Review Office
Kevin Beyer - President - Long Island Gasoline Retailers Association

MINUTES TAKEN BY:

Donna Catalano - Court Stenographer

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(*THE MEETING WAS CALLED TO ORDER AT 9:45 A.M.*)

CHAIRMAN ALDEN:

Good morning. Welcome to the Consumer Protection Committee Meeting. We'll start with the Pledge, and we'll have Legislator Lindsay lead us.

SALUTATION

CHAIRMAN ALDEN:

I realize that we still have people in harm's way and we've lost some, and I'd just like to take one moment of silence.

MOMENT OF SILENCE

CHAIRMAN ALDEN:

Thank you. We're going to have two presentation today. And Charlie, if you -- if you want to come up and just -- actually, Kevin if you want to come up too, because you are going to go right after Charlie. Thanks.

DIRECTOR GARDNER:

The only thing, Mr. Chairman, I have really new is just the updated home heating oil and gasoline price surveys. Of note is the home heating oil price survey, which the good news is that basically the price dropped like a rock, over 25 cents since the last -- just ten days or so ago. Of course, the heating season is just about over.

CHAIRMAN ALDEN:

Do you think there's any correlation between that?

DIRECTOR GARDNER:

Well, if you -- if you draft it, that's kind of, you know, I mean, you can see on the -- just for the last two years. But, yeah, it goes up, it goes down. But it was a very precipitous drop, very unusual. It dropped just in 13 days, to drop 26 cents a gallon is huge. So that's about the average. The range is, you know, we're back down into the teens for the low price. And the high is still well over \$2, we're still about 2.20 a gallon. We're running -- the range is more than -- actually more than a dollar a gallon, just the range from low to high.

Gasoline is still relatively stable, hasn't changed very much in the last the month. We're still below our all time highs. We're, as of yesterday, averaging about \$1.80 gallon.

CHAIRMAN ALDEN:

How about stock piles on Long Island?

DIRECTOR GARDNER:

We haven't heard of any problems here supply wise. Since -- you know, you are talking six weeks and the price really has gone up just a couple of pennies and then just in the last two weeks, it basically stayed the same, within a penny.

CHAIRMAN ALDEN:

Any other hot topics in Consumer Affairs?

DIRECTOR GARDNER:

None that I can discuss in public.

CHAIRMAN ALDEN:

All right. Thanks. All right. So that segues right into -- we have Kevin Beyer, President of Long Island Gasoline Retailers Association. An maybe you can give us a little overview of, you know, what's going on with the gas prices, and also, if you can add any other light on gasoline stocks on Long Island.

MR. BEYER:

Well, I haven't heard problems getting supplied, except for at one of the location Sunoco, they weren't able to get one product, they've been filling up out of Newark. But other than getting supplied, nobody's been held down, they've been just running the trucks more from New Jersey. As far as pricing is concerned, I haven't seen a drop. I checked this morning, I check everyday on the internet, and we haven't seen a decrease to Shell or Sunoco yet this morning. And there have been other brands that have come down on the street, I don't know if that's because they're chasing a rebate, because it is the end of the month or if they had a change in price, I didn't check on that. But usually, they follow each other. I'm in two different oil companies, both the them have not changed. So I don't think there's been a drastic change. And even the price has come down per barrel, they never come down as fast as they go up.

CHAIRMAN ALDEN:

I mean, your estimation of like near future and long term future, as far as prices, what would you estimate?

MR. BEYER:

The way I feel right now, as an owner-operator, the prices should be higher than what they are. A lot of the dealers are keeping them down. And the reason the should be higher is because of the cost of business, doing the business now. It's costing us more for the fuel, people are using their credit cards versus cash. So our cash flow is down. When you're using the credit card, the fee on it is very high, you are dealing with a 3%. So if you're dealing a gallon of gas almost being \$2 now, that's six cents out of your profit right off the bat. So truthfully, it should be higher on the street, but it's not.

CHAIRMAN ALDEN:

Kevin, to shift gears just a little bit, bootleg gas or the black market gas, is --

MR. BEYER:

It's always been a problem. And we've gone back and forth with the state on this. And we actually -- they set up a task force, and the

last thing that we heard which was a few years ago, that they didn't have the money to handle this, which is ridiculous, because it's millions of dollars being lost every month. There's nothing that we can -- I mean, as an individual dealer, we can't do anything. As an association, we can't do anything, we can bring it to light, and

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that's it.

CHAIRMAN ALDEN:

Is there any procedure whereby -- because I think we have slight jurisdiction with the state, or correct me if I'm wrong, Charlie. Do we have no jurisdiction on it or do we do any kind of sting operations with the state or is it strictly state?

DIRECTOR GARDNER:

Well, we have worked in the past with the task force, but the -- there are two main problems usually associated with bootleg gas, one of which is not so prevalent in Suffolk because of our distributors law that we have now. We're the only county in the state where the wholesalers have to be registered. The two main problems are taxes and octane. Taxes we can't do anything about, that's the state. Octane we do do something about, and the instances of violations there have decreased dramatically. And we still conduct tests, of course.

CHAIRMAN ALDEN:

Do we do any sting operations with the state as far as to try to determine, like, you know, they're bringing the stuff in?

DIRECTOR GARDNER:

No. We haven't in a very long time.

CHAIRMAN ALDEN:

So if we want to try to improve our revenue stream or collect what's actually due to us, we've got to push the state to get out here and start doing their job.

MR. BEYER:

All they really had to do was originally when we discussed this is if they just checked the trucks at Jersey as they are coming our the boarder, it's an easy -- you know, actually it's an easy fix. But they won't go about doing it. If they checked everything right there and knew that all the taxes were being paid for New York State coming across the bridge, but they are not doing that.

CHAIRMAN ALDEN:

There's no pending state legislation or anything like that?

MR. BEYER:

No that I'm aware wear of.

CHAIRMAN ALDEN:

Okay. Legislator Lindsay.

LEG. LINDSAY:

Do they prepay the taxes on the tanker?

MR. BEYER:

That's -- that's the big problem, because the dealers in New York, we prepay tax. In Jersey, they don't do that, and they're bringing that across the border. That's a lot of money, you know, out of each truck that the state losses.

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LEG. LINDSAY:

How do they do it Jersey?

MR. BEYER:

They're not paying -- there's no -- they don't have taxes on it.

LEG. LINDSAY:

There's no state tax.

DIRECTOR GARDNER:

That's one of the reasons that New Jersey gas is so much cheaper than New York State all the time.

LEG. LINDSAY:

I see.

CHAIRMAN ALDEN:

Legislator Nowick.

LEG. NOWICK:

Good morning. Just two questions. When you call it bootleg gas, does that mean it is not a good tank of gas? What does that mean?

MR. BEYER:

It means that it's not coming -- that taxes aren't being paid on into New York State. You don't know which terminal it's coming to. If somebody has a named gasoline, let's say a Sunoco or a Shell or Exxon

or Mobil, you don't know that you're really getting that product. Now, it is illegal, because if it turns out that that company finds out that that happens, if somebody slips in a truck, they'll loss their franchise right away. But the problem is with the no name gases, that's where -- that's where it lies.

LEG. NOWICK:

That's another question I had. And many of my constituents ask me, can I go -- of course, with the gas prices so high, everybody's looking to save a penny, a dime, whatever it is. When you thing about it, after ten gallons what have you save, 20 cents, but be that as it may, if someone -- they ask me if they go to these no frills, sort of no name stations, is it the same quality gasoline?

DIRECTOR GARDNER:

I mean, I can answer that based on our test. Basically, the answer is yes. The quality. It's the taxes --

LEG. NOWICK:

You can go to any no frills anything, it's the same.

DIRECTOR GARDNER:

That's correct.

LEG. NOWICK:

Except for?

DIRECTOR GARDNER:

Some of them might not have any additives, but even that is pretty much unheard of, because now even the 87's have the detergents and the additives. Pretty much all of the gasoline quality wise is as close as you can say to 100 percent is the same. I seen the tests on all the gallons. We test for benzine and sulfur and octane, etcetera, etcetera. We've got a whole sheet. You literally cannot tell the difference from one gasoline to another of all the different factors that are tested quality wise. Taxes is the big deal. So and, you know, we still do run into octane violations, where, you know, --

LEG. NOWICK:

How's that been working out?

DIRECTOR GARDNER:

Pardon?

LEG. NOWICK:

How's that new law been working out? Has it taken effect yet?

DIRECTOR GARDNER:

Oh, it's taken effect, yes. It's, I think, mainly due to the amount of publicity that was put out, you know, both -- where it was electronic media or the prints media. Let's just say it had an effect before it went into effect.

LEG. NOWICK:

Wonderful. Good. Thank you.

MR. BEYER:

Just one other thing about -- you don't usually see problems with octane in major brands. You will see it like you were saying in the off brand gases, because they're not -- they're not -- they're only being tracked by Suffolk County as compared to us being tracked by our oil companies. And the oil companies themselves are making sure it's correct, because they don't need the fines. It's the no names that actually -- that hurt us the most.

DIRECTOR GARDNER:

As Kevin mentioned, if you are brand station and you get a delivery from some -- let's say from a bootlegger or if you run -- if you run into an octane problem -- I mean, I can say it. I have seen -- those logos have been pulled literally the next day. They don't fool around, they meaning Exxon, Shell, Mobil. They do not fool around. And if you get stuck because you bought gas from some supplier you were not supposed to but it from, they move very very quickly. Their quality program is as good or better than any governmental. I mean, they do their own surveys, they do their own testing of gasoline. Now matter how far you want to go back, you could go back 20 years, map all the octane violations that we have ever issued, and less than 5% would be against what we call the seven or eight top major brands.

CHAIRMAN ALDEN:

Kevin, any other way you can see of dealing with the problem other than stopping the trucks on the Jersey border?

MR. BEYER:

No. Unless they implement the task force again, and they, you know, can create a think tank. But right now, that was the easiest

solution, just to put enforcement there. That's the easiest solution.

CHAIRMAN ALDEN:

Now, trickle down effect is that they would pay cash for this bootleg tanker -- tanker truck full of gas so when they sell it, basically only the very basic federal excise tax is being paid on that gallon gas, no sales tax or anything like that. So a gas station would actually just turn over as cash, pocket it and no taxes would be paid. All right.

DIRECTOR GARDNER:

I would ask Kevin if he could just break down. I think they are a lot of people that do not realize the amount in pennies, the taxes per gallon of gasoline. You might not have the exact numbers, Kevin, but I know you can come very close. And I think it would surprise a lot of people to know how much taxes there are on a gallon of gasoline.

MR. BEYER:

I don't have -- and I didn't bring the break down. I bought it to you prior. But I think it's around -- when you take federal excise, the federal tax, state tax, you have the Superfund taxes in it, environmental in it, spill fees, it runs around 30 cents a gallon or more.

CHAIRMAN ALDEN:

And then sales tax would be on top of that.

MR. BEYER:

Yeah, on the selling price.

CHAIRMAN ALDEN:

On the selling price.

MR. BEYER:

It's a lot for a gallon that we have to pay out in fees and taxes. And if a no brand or somebody else, even, you know, somebody who is bringing in bootleg gasoline, that's a big chunk that they get to pocket that we don't. So we're working on let's say ten cents, these people are working on 40 cents.

CHAIRMAN ALDEN:

I wanted to ask you one other question too while you're here, and again, it's just shifting gears a little more. I think there's one state in the union that actually has imposed a tax on gasoline, and it goes into an uninsured motorist fund.

MR. BEYER:

I'm not aware of that.

CHAIRMAN ALDEN:

I didn't know if you were aware. Okay. Good. I think with the committee's permission, I'm going to ask Paul Sabatino if he can think of anything that we can do to try to get New York State to either get

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this task force moving forward or, you know, do some kind of enforcement, because it sounds like there is literally millions of dollars that we're losing as far as revenues. Legislator Lindsay.

LEG. LINDSAY:

When you buy a tanker truck full of gas, there must be some kind of invoices or paperwork with it, right?

MR. BEYER:

Yes.

LEG. LINDSAY:

Does it indicate on that the taxes that are paid?

MR. BEYER:

Yes. For us, it's broken down. As a major, it's broken down.

LEG. LINDSAY:

Would it be something, Charlie, that we can do when we go to check the tanks to check the paper work to see if they have the invoices?

DIRECTOR GARDNER:

It sounds easy, but very rarely is the paperwork there.

LEG. LINDSAY:

Okay.

DIRECTOR GARDNER:

You know, remember that one of the difficulties that the task force faces, I'm not making excuses for them, is it's literally like finding a needle in a haystack. You can make -- someone who is bootlegging gasoline can literally make many of hundreds, four, five, maybe \$600 per tanker. Well, they don't have to steal every tanker load. Some places are getting a delivery everyday or every other day, or they'll get deliveries say four, five times a week. They only have to do it once or twice a week to make a lot of money. And deliveries are made 24 hours around the clock, including weekends. And most times the paperwork that is left, it doesn't stay at the station, as Kevin knows. When our inspectors or any governmental inspectors go in, very rarely is the paperwork from the last delivery or the last two or three or four. Those -- that paperwork is hardly ever there. You

might have the paperwork from the last delivery if it just happened that night or the day before, but after a couple of days go by, that paperwork is not there any more.

CHAIRMAN ALDEN:

Anything else? Okay. Thanks a lot.

MR. BEYER:

Thank you.

MR. SABATINO:

I don't have an immediate reaction, but I'll give it some thought and take a look. I think back in the '80s the way they did it was they has some -- it was a big issue, I think, at the turn of the decade in the '80s, and I think what happened was they basically did some sting

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operations and they got somebody on the inside. But Legislatively, it might be hard to think of something. I'll give it some further thought. I'll go back at some of the old clippings on that.

CHAIRMAN ALDEN:

Thank you. All right. We'll go to the agenda.

TABLED RESOLUTIONS

2057-2002. Adopting Local Law No. -2002, a Local Law updating regulations for precious metal exchanges and dealers in secondhand articles. (CARPENTER)

CHAIRMAN ALDEN:

Legislator Carpenter.

LEG. CARPENTER:

Believe it or not, we're still working on it, but I should have it ready to move at the next committee meeting, so I will make a motion to table. Thank you.

CHAIRMAN ALDEN:

Motion to table by Legislator Carpenter, seconded by Legislator Nowick. All in favor? Opposed? 2057 is TABLED. (VOTE: 4-0-0-0)

2297-2002. Adopting Local Law No, -2002, a Charter Law directing Suffolk County action to roll back cable television rates in Suffolk County. (ALDEN)

CHAIRMAN ALDEN:

The -- I believe that we closed the hearing on that, so I'm going to make a motion to approve.

LEG. LINDSAY:

I'm going to second it, but I do have some questions about it.

CHAIRMAN ALDEN:

Sure.

LEG. LINDSAY:

The bill would require us to explore legal action to roll back the rates.

CHAIRMAN ALDEN:

Right. If directed by the population of Suffolk County.

LEG. LINDSAY:

Referendum?

CHAIRMAN ALDEN:

Yes.

LEG. LINDSAY:

Oh. We don't know the cost of that until we start interviewing attorneys.

CHAIRMAN ALDEN:

All this with a do is put it on as a referendum to the people of Suffolk County. If they say yes, it's got a limit in there to spend up to \$250,000. So it doesn't mean you have to spend that. We might not have to spend anything. It would depend on whether feds take action or whether the state takes action again. Even the local governments. I've been approached by a couple of local governments, and they might be interested in doing something.

CHAIRMAN ALDEN:

All right. So I have a motion and a second? All in favor? Opposed?

LEG. CARPENTER:

I'm abstaining.

CHAIRMAN ALDEN:

Legislator Carpenter abstains.

APPROVED. (VOTE:3-0-1-0) (Leg. Carpenter abstained)

LEG. NOWICK:

Can I ask a question.

CHAIRMAN ALDEN:

Sure. Legislator Nowick.

LEG. NOWICK:

I'm concerned about the price of litigation if that should occur. You are an attorney so maybe you know the answer. If it should occur, do we have a good solid case where it is worth taking on the this amount of money?

CHAIRMAN ALDEN:

Well --

LEG. NOWICK:

Like 250,000.

CHAIRMAN ALDEN:

Actually, we'll be directed by the people of Suffolk County whether they want us to do that or not. So that's the key to the whole legislation. But say, for instance, people of Suffolk County in this referendum say, yes, we want you to try to do something to regulate or reregulate cable rates, we don't necessarily have to hire an attorney. We can put pressure on the federal government to reregulate as they have in the past. They still regulate the basic cable rate, but anything above that, they do not do anything on. They've -- according to the Telecommunications Act of 1996, they have turned their backs on that type of regulation.

There's also a possibility that New York State can regulate. There is a possibility also -- like I said before, some of the towns have approached me, and they's be interested in possibly stepping up to the plate and doing some regulations of rates. And right now they're the ones -- they collect the franchise fee in Suffolk County. So this does not automatically say that we're spending any money. This asks the people of Suffolk County if they want us to get involved. And

then it puts a cap on how much we would get involved for, and that is \$250,000 I believe.

LEG. NOWICK:

And the other concern is also what would the cost of referendum --

putting this up to a referendum, would that cost the County?

CHAIRMAN ALDEN:

I'm not 100% sure, but I'll just punt that over to Legislative Counsel.

MR. SABATINO:

The conduct of the referendum itself since it would occur at the general election would incur no cost. There's only a cost when you try to do it at a non general election time. So there will be no cost associated with that.

LEG. NOWICK:

Thank you.

CHAIRMAN ALDEN:

Legislator Carpenter.

LEG. CARPENTER:

My concern is that it may put out the false impression that we as a Legislative Body have some control over this industry, and we do not. I find that referendums are not necessarily well publicized. People are not -- you know, are they really going to know that it's committing taxpayer dollars to go to attorneys to engage in a lawsuit where we technically have no jurisdiction. So even though I, you know, am supportive of anything that would help lower rates for our consumers and our taxpayers, I don't know that this is necessarily the right approach. I think the Sense Resolution that we passed, whatever we can do collectively as a body to get those levels of government that do have jurisdiction to act in an appropriate fashion is better strategy for us to employ. So for all those reasons, I'm going to abstain on this.

CHAIRMAN ALDEN:

That's fine. And basically it's my job as the sponsor of this resolution, which I've been doing, I've held a number of public hearings, and I have been very very clear in any statement that goes out to the public that we do not have any regulatory authority at this point. And what we're doing by this referendum is asking that absent that regulatory authority, do you want your local government, Suffolk County, to go out and try to do something to help you as a consumer. And basically the people that subscribe to cable rates are a consumer. And I believe that's one of our functions as a government body or governmental body to try to protect our citizens. And while this puts a cap on how much we could spend, it does not mean that you have to spend \$250,000. You can take any type of action at all, but we're asking for a little bit of direction from the people in Suffolk County on this. And this is my job though to make sure the people are 100% clear on this, and they don't get the false impression that we have any regulatory authority right now. Because if we did, they should

actually take us out and shoot us if we allowed something like this to

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happen and we had the authority to prevent it. All right. That's it on the resolution. Actually, that's it on the agenda. Anybody have anything else to come before the committee?

LEG. LINDSAY:

Yeah. Do we have new information about the process servers legislation? We were going to check with the Presiding Officer, to see if --

CHAIRMAN ALDEN:

Right. We have to stay up on that because it's July, and that deadline is closely in proximity. Charlie, you're indicating --

DIRECTOR GARDNER:

I haven't heard anything. We are not in a position to handle that.

LEG. LINDSAY:

Mr. Chairman, maybe we could express the wish of the committee that we're concerned about, you know, the department saying they're going to have a hard time enforcing it as is.

CHAIRMAN ALDEN:

Megan, you are in representing the P.O. today?

MS. O'REILLY:

Yes.

CHAIRMAN ALDEN:

Could you just, as part of your report out of this committee and as expressed by Legislator Lindsay and all of us, that if she can either, you know, come to the next committee meeting or if she could prepare something that just states where we are in that, you know, process because they were a number of changes that have to be made, it has to be coordinated with Consumer Affairs, and Charlie's indicating that up to this point he hasn't heard anything about what changes would be proposed. But if someone could come and give us a little report on that, we would appreciate it.

MS. O'REILLY:

Okay.

CHAIRMAN ALDEN:

Thank you. Anything else? Okay. Thank you. We stand adjourned.

(*THE MEETING WAS ADJOURNED AT 10:11 A.M.*)

{ } DENOTES BEING SPELLED PHONETICALLY